LATHAM & WATKINS LLP
Perry J. Viscounty (SBN 132143)
perry.viscounty@lw.com
Andrew Gass (SBN 259694)
andrew.gass@lw.com
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
(415) 391-0600 / (415) 395-8095 Fax

Attorneys for Plaintiff
craigslist, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CRAIGSLIST, INC., a Delaware corporation, Plaintiff, v. RADPAD, INC., a Delaware corporation, and DOES 1-10, Defendants.	CASE NO. 16-CV-01856-CRB **FIRST AMENDED COMPLAINT FOR:** **(1) BREACH OF CONTRACT** **(2) VIOLATIONS OF THE CAN-SPAM ACT** **(3) VIOLATIONS OF CALIFORNIA RESTRICTIONS ON UNSOLICITED COMMERCIAL EMAIL ADVERTISERS** **(4) VIOLATIONS OF THE COMPUTER FRAUD AND ABUSE ACT** **(5) VIOLATIONS OF THE CALIFORNIA COMPREHENSIVE DATA ACCESS AND FRAUD ACT** **(6) DIRECT AND INDIRECT COPYRIGHT INFRINGEMENT OF THE 2016 COPYRIGHTED WORKS** **(7) INDIRECT COPYRIGHT INFRINGEMENT OF THE WORKS 3TAPS INFRINGED** **DEMAND FOR JURY TRIAL**

Plaintiff craigslist, Inc. ("craigslist"), for its Complaint against RadPad, Inc. ("RadPad"), and Does 1-10 (the "Doe Defendants") (collectively, "Defendants"), alleges as follows:

NATURE OF THE ACTION

1. Over the last 20 years, craigslist has developed one of the world's most popular websites, *craigslist.org*, which offers a simple and trusted platform for authorized users to seek employment, offer and search for housing, trade goods and services, find companionship, and engage in community discussions. craigslist's platform attracts tens of millions of authorized users who collectively post several hundred million classified ads each year. Unfortunately, craigslist's success has made it an attractive target for unscrupulous "businesses" attempting to unlawfully capitalize on craigslist's hard-earned success and popularity. Despite craigslist's best efforts, these bad actors attempt to access and exploit the content of the craigslist website without authorization and for their own commercial gain, in violation of craigslist's Terms of Use and both California and federal law. RadPad is one such enterprise.

2. RadPad offers an online real estate rental listing service that competes against craigslist. But instead of innovating to attract its own customer base, RadPad has sought to unlawfully piggyback on craigslist's decades of hard work by unlawfully accessing the craigslist website, stealing craigslist users' posts and contact information, spamming those users with misleading emails, and then reposting the harvested craigslist listings on the RadPad site. By this action, craigslist seeks to put a stop to RadPad's unlawful conduct.

3. This action is related to a recent case in which craigslist obtained permanent injunctions against a collection of defendants, including 3taps, Inc. ("3taps"), engaged in virtually identical unlawful conduct. *See craigslist, Inc. v. 3taps, Inc. et al.*, No. CV 12-03816 CRB (N.D. Cal.) (the "3taps Litigation"). In that related case, 3taps was, like the Defendants here, unlawfully accessing the craigslist website, harvesting craigslist's users' posts and contact information, and (with the aid of others) spamming them. But rather than using the misappropriated content to itself compete directly with craigslist, 3taps sold it to various third parties who did. craigslist sued 3taps and two of its "customers," Discover Home Network Inc. d/b/a Lovely ("Lovely") and PadMapper, Inc. ("PadMapper"), for copyright infringement and a

variety of other claims, and obtained permanent injunctions against all of them.

4. RadPad was another company that received craigslist listings from 3taps. But beyond just being a customer, RadPad, on information and belief, also consulted with 3taps about improvements to 3taps' product and efforts to evade craigslist's technological blocking measures, just as fellow customers Lovely and PadMapper did. Now that 3taps is permanently enjoined, RadPad and the Doe Defendants[1] have taken up the mantle themselves, finding new ways to unlawfully access and scrape craigslist content, infringe craigslist's copyrights, and harass craigslist's users.

5. This unlawful conduct must stop. By accessing craigslist's website to misappropriate user posts and private information, Defendants violate craigslist's Terms of Use (*i.e.*, commit breach of contract), along with the federal Computer Fraud and Abuse Act ("CFAA") and its California state law equivalent. By using that information to send misleading spam emails, by the tens of thousands, to craigslist's users, Defendants violate the federal CAN-SPAM Act and its California state law equivalent. By posting craigslist rental listings, including their full text and photos, on RadPad's site without the consent of craigslist or its users, Defendants violate the Copyright Act. And beyond all of that, Defendants are secondarily liable for the copyright infringements that 3taps committed.

JURISDICTION

6. This is a civil action for breach of contract; violations of the CFAA, 18 U.S.C. § 1030; violations of the California Comprehensive Data Access and Fraud Act, Cal. Penal Code § 502; violations of the CAN-SPAM Act, 15 U.S.C. § 7701 et seq.; violations of the California Restrictions on Unsolicited Commercial Email Advertisers, California Business and Professional Code § 17529, et seq.; and copyright infringement under the federal Copyright Act of 1976 (as

[1] On August 8, 2016, RadPad served its initial responses to craigslist's First Set of Interrogatories. Through these responses, craigslist learned that RadPad hired a team of freelancers from a company called Elance-oDesk, Inc. (later renamed "UpWork") to systematically extract information from the craigslist website and send it to RadPad. *See* RadPad's Response to Interrogatory No. 1 dated August 8, 2016. Further discovery is necessary to determine the names of the Elance-oDesk freelancers and the details of their activities, including whether Elance-oDesk systematically enabled or allowed the unlawful conduct to take place.

amended), 17 U.S.C. § 101 *et seq*.

7. This court has jurisdiction over the CAN-SPAM and CFAA claims under 28 U.S.C. §§ 1331, and the Copyright Act claims under 28 U.S.C. §§ 1331 and 1338.

8. This Court has supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1367.

9. This Court has personal jurisdiction over Defendants because they have conducted substantial business and on information and belief maintain offices in this State and because they have consented to personal jurisdiction in this State by agreeing to craigslist's Terms of Use, which require such consent, as alleged herein.

VENUE

10. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to the claims alleged in this Complaint occurred in this District and because Defendants have consented to venue in this District by agreeing to craigslist's Terms of Use, which require such consent, as alleged herein.

INTRADISTRICT ASSIGNMENT

11. This is an Intellectual Property Action and may be assigned on a district-wide basis pursuant to Civil L.R. 3-2(c).

THE PARTIES

12. craigslist, Inc. is a Delaware corporation, with its principal place of business in San Francisco, California.

13. Defendant RadPad, Inc. is a Delaware corporation, with its principal place of business in Los Angeles, California.

14. craigslist does not know the true names of Defendants Does 1 through 10, inclusive, and therefore sues those defendants by such fictitious names. craigslist is informed and believes, and on that basis alleges, that Defendants Does 1 through 10, inclusive, are responsible for the acts alleged in this Complaint. When the true names of such fictitious defendants are ascertained, craigslist will seek leave of this Court to amend this Complaint to name those individuals or entities.

GENERAL ALLEGATIONS

The craigslist Classified Ad Service

15. Founded in San Francisco, California in 1995 by Craig Newmark, craigslist began as an email list for friends and co-workers to share information about events in and around the Bay Area. Today, craigslist has become one of the world's most popular websites, relied upon by its authorized users who seek employment, offer and search for housing, trade goods and services, find companionship, and engage in community discussions. craigslist's fierce dedication to its users is reflected in the website's various policies and efforts to protect those users from spam, scams, and the unauthorized harvesting or use of content posted by users, including their personal information, by third parties seeking to exploit that content and information for their own commercial gain. Users, in turn, entrust their content and information to the craigslist website.

16. By accessing the craigslist website, all visitors agree to craigslist's Terms of Use. That contract provides that scraping the craigslist website and spamming craigslist's other users are both prohibited. Specifically, the Terms of Use state: "Robots, spiders, scripts, scrapers, crawlers, etc. are prohibited, as are misleading, unsolicited . . . and/or spam postings/email. You agree not to collect users' personal and/or contact information." From past experience, craigslist has learned that certain third parties intent on misappropriating craigslist content go to elaborate lengths to try to mask their identity and evade technological blocks that craigslist imposes on users who repeatedly violate the Terms of Use. As a result, those acts of technological evasion are also prohibited under the contract.

17. Once bound by the Terms of Use, users can browse ads posted by other users, or post ads themselves. Users' ads typically include a title, description and other relevant details about whatever the user placing the ad may be offering or seeking, and often include an email address and telephone number for replies. Typically, that information is initially hidden from public view, to make it more difficult for "scrapers" to copy.

The 3taps Litigation

18. For nearly as long as it has existed, craigslist has been combatting scrapers and

other commercial enterprises from misappropriating its listings and user information.

19. Several years ago, 3taps set out to systematically harvest, and then sell for profit, every post on the craigslist website. Acting through a network of overseas contractors and agents specifically to evade the jurisdiction of U.S. law enforcement, 3taps would, on a daily basis, send an army of digital robots to craigslist to copy and download the full text of millions of craigslist user ads. 3taps then indiscriminately made those misappropriated listings available—through its so-called "data feed"—to any company that wanted to use them, for any purpose. Some such "customers" paid as much as $20,000 per month for that content, while others received it for free.

20. Lovely and PadMapper were two of 3taps' "customers" (and as discussed below, RadPad was a third). Lovely and PadMapper both operated websites offering real estate listing services in competition with craigslist. They both took the scraped craigslist ads they received from 3taps and posted those ads on their own sites. craigslist users, in turn, repeatedly complained to craigslist that they had never authorized those third-party websites to post their listings, and that they were getting calls from apartment seekers long after the locations they had advertised on craigslist were rented.

21. In July 2012, craigslist sued 3taps and PadMapper for, *inter alia*, copyright and trademark infringement, breach of contract, and unfair competition. In November 2012, craigslist added Lovely as a defendant.

3taps' Copyright Infringements

22. In the course of the 3taps Litigation, craigslist started giving its users the choice whether to assign the copyright in their ads to craigslist. The purpose of that "opt-in" system was, expressly, to allow craigslist to enforce the copyrights in those individual listings against third parties that stole them. In short order, tens of thousands of craigslist users availed themselves of that option. craigslist, in turn, filed applications to register thirty of those works with the U.S. Copyright Office. The resulting copyright registrations are as follows:

Title	Reg. No.	Date
2 BR Home Carrolton Gardening	TX0007989703	2015
Contemporary mid-downtown condo	TX0007989682	2015

Elegant Beauty! Restored 1930's Duplex – Stunning Deco Details	TX0007989774	2015
Fabulous Luxury 2+BR 2.5 BA, Stunning Sage Arts Building	TX0007989753	2015
One of a Kind Home for Rent! Close to EVERYTHING!	TX0007989781	2015
River Community – 2BR Rental $950	TX0007989996	2015
This place is gold – Don't pass it up! Granite, Wood, W/D in unit!	TX0007989761	2015
Smiling Faces & A Beautiful Place **$500 Off 1 St Mo** Only One Left	TX0007989685	2015
Gorgeous Pool Views & Wood Flooring! April Move In! No Deposit!	TX0007989765	2015
Matthews Co, VA: country living, 10 acres	TX0007989738	2015
Large One Bedroom Capitol Hill	TX0008004077	2015
Beautiful Old Fashioned Two Story Home	TX0008004085	2015
$720 Save $200 now on an apartment home in park-like setting!	TX0008004028	2015
Elegant Sexton Mtn Home	TX0008004020	2015
Clean 2 Bedroom, 2 Bath Condo	TX0008004015	2015
Rare Victorville Casita Home!	TX0008004048	2015
Gorgeous Condo with updates!	TX0008004004	2015
Charming, Newly Renovated ALLENTOWN W/ CABIN FEEL	TX0008003997	2015
Soak Up the Sun!	TX0008003993	2015
Well maintained townhouse with attached garage; nice price too!	TX0008003986	2015
Reduced – Classic Downtown Historic House	TX0008004094	2015
Beautiful Home	TX0008004098	2015
Beautiful 1 Bedroom house on lake for Rent, GET IT QUICK!	TX0008004102	2015
Fall 2015 Close to WMU 5 BR 2 Bath!	TX0008007914	2015
Grocery Stores and Shopping Just Five Minutes Away	TX0008004105	2015
$1800 month Lake Front – Chain Of Lakes	TX0008003731	2015
Charming Greenlake 1 bdr Home	TX0008004036	2015
Great Neighborhood East of Love Field	TX0008004067	2015
FUN BY THE SUN!!! LUXURY APARTMENTS BY THE BEACH	TX0008004070	2015
Tropical Paradise w/ Pool	TX0008004074	2015

23. 3taps willfully infringed the copyright in each of these works. It reproduced them, by copying the full text of each listing from the craigslist site to 3taps' own internal database. And then it distributed them, by including them in the "data feed" which it sent out to its "customers."

24. All of the defendants in the 3taps litigation are now permanently enjoined from engaging in such conduct or otherwise using craigslist users' posts in any way.

Final Judgments and Permanent Injunctions In The 3taps Litigation

25. On April 3, 2015, following a stipulation between the parties, the United States District Court for the Northern District of California entered a Final Judgment, including a $2.1 million monetary judgment, and Permanent Injunction against Lovely. Attached as Exhibit A is a true and correct copy of the Final Judgment and Permanent Injunction against Lovely.

26. On June 30, 2015, following a stipulation between the parties, the United States District Court for the Northern District of California entered Final Judgments and Permanent Injunctions against 3taps (and related parties) and PadMapper, including a $1,000,000 monetary judgment against 3taps and its related parties. Attached as Exhibit B is a true and correct copy of the Final Judgment and Permanent Injunction against 3taps and its related parties. Attached as Exhibit C is a true and correct copy of the Final Judgment and Permanent Injunction against PadMapper.

27. The permanent injunctions entered against Lovely, PadMapper and 3taps are sweeping. They broadly prohibit those parties and their respective agents and representatives, from, *inter alia*: (i) accessing or using craigslist, directly or indirectly; (ii) copying, downloading, harvesting, or obtaining craigslist user postings by any means whatsoever; (iii) directly or indirectly displaying craigslist content; (iv) circumventing technological measures that control access to craigslist; (v) infringing any of craigslist's copyrighted materials; and (vi) sending or transmitting, or paying, directing, aiding, or conspiring with others to send or transmit spam messages to craigslist users.

RadPad's Relationship With 3taps

28. Like Lovely and PadMapper, RadPad is a former "customer" of 3taps—that is, RadPad received the misappropriated craigslist listings that 3taps scraped, to use on RadPad's own website.

29. On information and belief, the interactions between RadPad, the Doe Defendants, and 3taps went far beyond a limited buyer-seller relationship. Like other 3taps "customers," RadPad, on information and belief, provided feedback to 3taps about its service and assisted 3taps in shaping and tailoring its "data feed." RadPad and the Doe Defendants likely also, on information and belief, advised 3taps about how to circumvent craigslist's technological blocking efforts, and otherwise materially contributed to and induced 3taps' unlawful reproduction and distribution of craigslist user listings.

30. On December 4, 2013 and January 13, 2014, while RadPad was still using 3taps' data feed, craigslist sent RadPad cease and desist letters expressly revoking RadPad's right to use

or access craigslist in any way or for any purpose. craigslist demanded that RadPad cease and desist its abuse of craigslist and all violations of craigslist's legal rights, and informed RadPad that any access to or use of the craigslist website or services by RadPad or on RadPad's behalf is unauthorized.

RadPad's Recent Conduct

31. Following the June 2015 permanent injunction against 3taps, RadPad began its own independent efforts to unlawfully access the craigslist website, misappropriate craigslist users' contact information, make copies of their listings, and initiate commercial electronic messages.

32. In an effort to stop that conduct, craigslist recently filed a new suite of copyright registration applications for ads posted by users, where the users voluntarily assigned their copyrights to craigslist. Those applications—106 in all—are catalogued in Exhibit D (the "2016 Copyrighted Works"). These are all works that, on information and belief, RadPad copied in full—including all or substantially all of the listings' text and the photos—and publicly displayed on the RadPad site, without consent from craigslist or the craigslist users who authored the posts, as described below.

33. RadPad has admitted that from June 2015 to June 2016 RadPad hired "a team of [10 to 15] individuals through Elance-oDesk, Inc. to manually review" the craigslist website and "to send information from" craigslist to RadPad. *See* RadPad's Response to craigslist's Interrogatory No. 1 dated August 8, 2016. On information and belief, like 3taps before it, RadPad and/or the Doe Defendants used a variety of techniques to evade detection by craigslist, despite craigslist's best efforts to block them.

34. On information and belief, when RadPad and/or the Doe Defendants accessed the craigslist site, they copied the full text and photographs of thousands or millions of craigslist user listings into a database. On information and belief, RadPad then took all, or substantially all, of the full text and photographs of these listings and publicly displayed them on the RadPad website. This allegation is based in part on the fact that RadPad has now admitted that "it has displayed content on its website that originated from publicly displayed" craigslist user listings.

See RadPad's Response to craigslist's Request for Admission No. 17 dated August 8, 2016.

35. On information and belief, RadPad and/or the Doe Defendants also engage or engaged in a scheme that works as follows: They harvest craigslist users' contact information from that database, and initiate many thousands of electronic mail messages per day to the addresses harvested from craigslist servers. RadPad and the Doe Defendants then co-opt and abuse craigslist's own "relay" system (*i.e.*, the electronic communication system through which craigslist users can correspond with each other) to transmit their commercial electronic mail messages.

36. RadPad sends messages to craigslist users that display a fraudulent return address such as "no-reply@rentyourpad.info," and, in the body, are generally fraudulently signed "Emily." They contain misleading subject lines and content in the body of the spam messages, designed to trick craigslist users into switching from using craigslist's services to using RadPad's services.

37. The deceptive subject lines of RadPad's and/or the Doe Defendants' spam emails include such phrases as "Your charming Apartment," "Love your Apartment," "Love your House" and "Love your place!" Those automated form subject lines, and others like them, mislead recipients to believe that the sender is a natural person who has reviewed the craigslist user's ad and has formed a positive impression that might lead to a rental agreement (the objective for placing the ad on craigslist). In reality, RadPad and/or the Doe Defendants have programmed a computer to insert these and other form statements into the subject line to trick the recipient into believing that it is a bona fide lead from another (human) craigslist user with a sincere interest in renting the property. In other words, the sender of the message is merely conducting an automated commercial electronic mail message campaign for the purpose of promoting RadPad.

38. The body of these spam emails takes several forms. For example, one reads:

> Just wanted to say how great your Apartment is. I know how hard it can be to find great renters on craigslist, that â€™s [sic] why I've featured your apartment (http://goo.gl/2EFr[redacted]) to help you drive qualified applicants. With over 2 million renters, you can receive applications, income history, credit scores, and more renter data to actually find a great tenant. Let me know what you think.

Emily

39. Another reads:

> I love your place so much that I featured it and have multiple applicants who are interested in reaching you http://goo.gl/zMn[redacted]. With over 2.2 million renters working with us, you’ll receive full applications with income history, credit scores, background checks and more renter data to find a renter youâ€™ll [sic] love. Let me know if there is anything else I can help with. Emily

40. Clicking the link in the email takes the user to the “goo.gl” address listed, which then resolves to a page on the RadPad website. On that page, a sign-up box is in the foreground, with the craigslist user’s contact information pre-populated. In the background is the ad the user posted to craigslist—replete with all of the user’s pictures and the full text of his or her listing—reformatted to fit the RadPad listing template. Figure 1, below, provides an example:

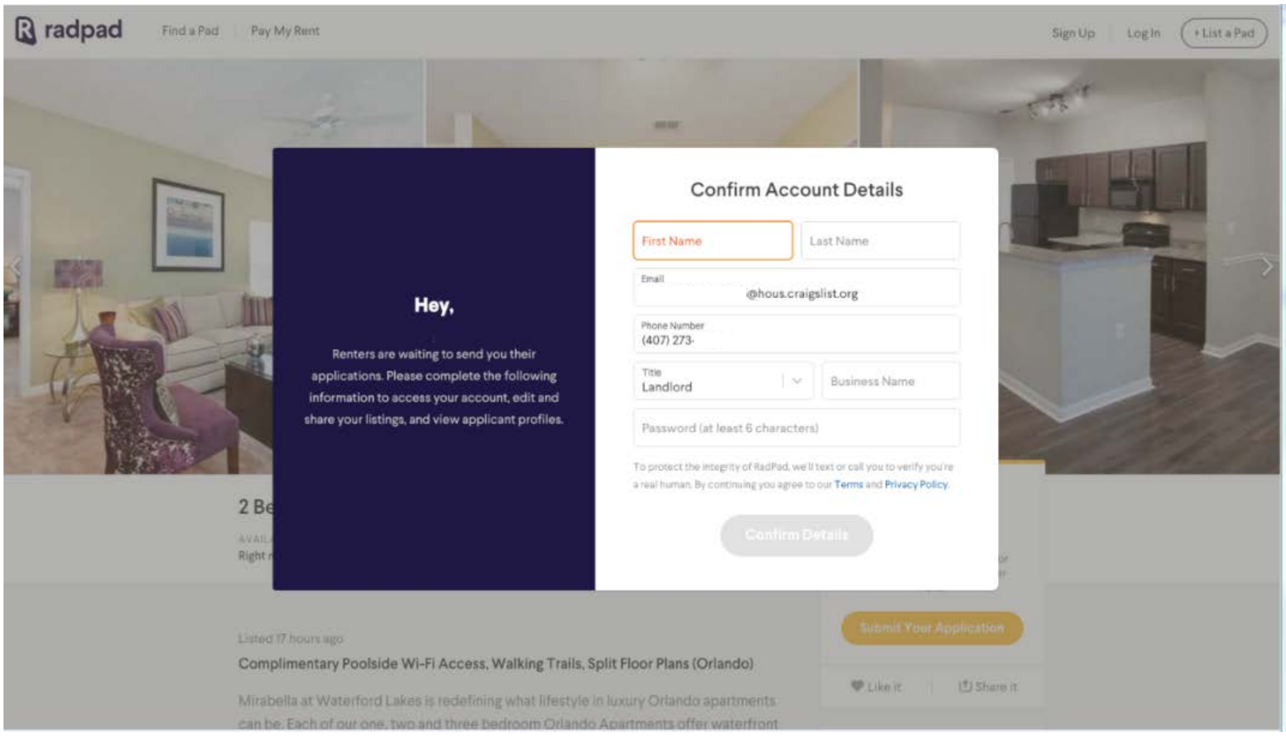
radpad
Find a Pad
Pay My Rent
Sign Up
Log In
+ List a Pad
Hey,
Renters are waiting to send you their applications. Please complete the following information to access your account, edit and share your listings, and view applicant profiles.
Confirm Account Details
First Name
Last Name
Email
@hous.craigslist.org
Phone Number
(407) 273-
Title
Landlord
Business Name
Password (at least 6 characters)
Confirm Details
Submit Your Application
Listed 17 hours ago
Complimentary Poolside Wi-Fi Access, Walking Trails, Split Floor Plans (Orlando)
Like it
Share it

Figure 1 (*onradpad.com*, March 4, 2016) (redacted)

Irreparable Harm

41. Defendants' actions have caused and will cause irreparable harm to craigslist, for which it has no adequate remedy at law. Defendants' conduct diminishes craigslist's goodwill—*inter alia* by harming its customers and interfering with its relationships with those customers—and injures craigslist's reputation as a trusted and secure platform. craigslist has worked hard and invested heavily for many years so that its site can be used largely free of charge and its users protected from spam, and has implemented a complex array of protocols to ensure that users will determine where their own listings appear and for how long. When Defendants pirate users' material from the craigslist site and re-display it on RadPad's site, users are effectively robbed of that ownership and control.

42. Defendants' conduct also requires craigslist to deploy and administer an arsenal of technological measures to try to impede Defendants' ever-changing scraping and spamming strategies. That arms race has remained ongoing throughout at least a portion of this litigation. Although craigslist does its best to protect its site from Defendants' unwanted and improper interference, those efforts are far from one hundred percent successful—leaving craigslist users victim to RadPad and its associates' rampant violations of the law.

FIRST CLAIM FOR RELIEF

Breach of Contract

43. craigslist realleges and incorporates by reference all of the factual allegations set forth above.

44. At all relevant times, the main craigslist homepage, and other pages from which users navigate the craigslist website, have prominently displayed links to craigslist's Terms of Use and made clear that users may not access the craigslist website without agreeing to those Terms of Use. In addition, craigslist users are presented with the Terms of Use and must affirmatively accept them to register for a craigslist account to post ads. Similarly, craigslist users are presented with the Terms of Use and must affirmatively accept them before posting an ad without an account.

45. RadPad and/or the Doe Defendants have accepted and agreed to be bound by the

Terms of Use by creating accounts, posting ads to craigslist and/or browsing or otherwise accessing the craigslist website.

46. RadPad and/or the Doe Defendants have regularly accessed and used the craigslist website to, among other things, copy and misappropriate craigslist's users' personal and/or contact information, and send spam through craigslist's re-mailer to craigslist's users.

47. On information and belief, RadPad and/or the Doe Defendants have used (and continue to use) software or services that interact or interoperate with craigslist, and have employed robots, spiders, scripts, scrapers or crawlers on the craigslist website.

48. On information and belief, RadPad and/or the Doe Defendants have circumvented (and continue to circumvent) craigslist's efforts to block RadPad's and/or the Doe Defendants' access to the craigslist website.

49. RadPad has sent and continues to send misleading, unsolicited, unlawful and/or spam postings and/or email to craigslist users.

50. RadPad's and/or the Doe Defendants' actions have breached craigslist's Terms of Use.

51. craigslist has performed all conditions, covenants, and promises required of it in accordance with the Terms of Use.

52. RadPad's and/or the Doe Defendants' conduct has caused and continues to cause irreparable and incalculable harm and injury to craigslist.

53. craigslist is entitled to injunctive relief, compensatory damages, costs and/or such other relief as may be available.

SECOND CLAIM FOR RELIEF

CAN-SPAM: 15 U.S.C. § 7701 *et seq.*

54. craigslist realleges and incorporates by reference all of the factual allegations set forth above.

55. craigslist is a provider of Internet access service as defined in 15 U.S.C. § 7702(11) because it provides a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to

proprietary content, information, and other services as part of a package of services offered to consumers.

56. craigslist's website and computers are used in and affect interstate and foreign commerce and communication, and are therefore protected computers within the meaning of 15 U.S.C. § 7702(13).

57. The spam messages initiated by RadPad and/or the Doe Defendants are "commercial" electronic mail messages because their primary purpose is the commercial advertisement or promotion of RadPad's commercial products or services (including content on an Internet website operated for a commercial purpose) as provided in 15 U.S.C. § 7702(2)(A).

58. On information and belief, RadPad and/or the Doe Defendants initiate the transmission of commercial electronic mail messages with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that the messages contain, or are accompanied by, header information that is materially false or materially misleading.

59. On information and belief, RadPad and/or the Doe Defendants initiate the transmission of commercial electronic mail messages with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that the messages' subject heading would be likely to mislead a recipient, acting reasonably under the circumstances.

60. RadPad and/or the Doe Defendants are also engaged in a pattern or practice of initiating the transmission of commercial electronic mail messages that do not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient could use, in a manner specified in the message, to request not to receive future commercial electronic mail messages from that sender.

61. In addition, RadPad and/or the Doe Defendants initiate the transmission of commercial electronic messages, in a pattern or practice, that does not clearly and conspicuously identify that the messages are advertisements or solicitations for RadPad's services, do not contain clear and conspicuous notice of the opportunity to decline to receive further commercial electronic mail messages from the sender, and do not provide a physical postal address of the sender.

62. On information and belief, RadPad and/or the Doe Defendants originate or transmit commercial electronic messages or intentionally pay or provide other considerations to another person to initiate such messages on its behalf, with actual knowledge that, or by consciously avoiding knowing whether, such person is engaging, or will engage, in a pattern or practice that violates the CAN-SPAM Act.

63. Moreover, RadPad and/or the Doe Defendants knowingly initiate the transmission of commercial electronic mail messages or assist in the origination of such messages to craigslist users with actual knowledge or knowledge fairly implied on the basis of objective circumstances that the email addresses were obtained by using an automated means such as email harvesting software.

64. RadPad's and the Doe Defendants' conduct violates the CAN-SPAM Act many times over, including without limitation 15 U.S.C. §§ 7704(a)(1), (a)(2), (a)(3), (a)(5), and (b).

65. craigslist is adversely affected by reason of these violations, including, without limitation, by incurring expenses and resources associated with being forced to investigate and combat RadPad's and/or the Doe Defendants' unauthorized spam messages.

66. craigslist is entitled to statutory damages in an amount to be proven at trial.

67. craigslist is entitled to aggravated damages in an amount equal to three times the amount otherwise available pursuant to 15 U.S.C. § 7706(g)(3)(C) because RadPad and/or the Doe Defendants have knowingly and willfully violated craigslist's rights and has sent commercial electronic mail messages to craigslist users by using automated means to obtain their email addresses as set forth in 15 U.S.C. § 7704(b).

68. In addition, craigslist has suffered and will continue to suffer irreparable harm, and its remedy at law is not itself adequate to compensate it for injuries inflicted by RadPad and/or the Doe Defendants. Accordingly, craigslist is entitled to injunctive relief pursuant to 15 U.S.C. § 7706(g)(1)(A).

69. craigslist is also entitled to recover its costs, including attorneys' fees, pursuant to 15 U.S.C. § 7706(g)(4).

THIRD CLAIM FOR RELIEF

Restrictions on Unsolicited Commercial Email Advertisers:

Cal. Bus. & Prof. Code § 17529, *et seq.*

70. craigslist realleges and incorporates by reference all of the factual allegations set forth above.

71. craigslist is an electronic mail service provider as defined in Cal. Bus. & Prof. Code § 17529.1 because it is an Internet service provider that is an intermediary in sending or receiving electronic mail or that provides to end users of the electronic mail service the ability to send or receive electronic mail.

72. The electronic messages initiated by RadPad and/or the Doe Defendants are "commercial e-mail advertisements" as defined in Cal. Bus. & Prof. Code § 17529.1 because they were initiated for the purpose of advertising or promoting the lease, sale, rental, gift, offer, or other disposition of any property, goods, services, or extension of credits.

73. The commercial email advertisements were sent from California or sent to California electronic mail addresses.

74. On information and belief, RadPad and/or the Doe Defendants initiated and advertised RadPad's services and websites in commercial email advertisements which contain falsified or misrepresented header information in violation of Cal. Bus. & Prof. Code § 17529.5(a)(2).

75. In addition, on information and belief, RadPad and/or the Doe Defendants initiated and advertised RadPad's services and websites in commercial email advertisements which contain subject lines that are likely to mislead the craigslist users receiving the messages as to the contents or subject matter of the message in violation of Cal. Bus. & Prof. Code § 17529.5(a)(3).

76. craigslist has suffered damages and losses by reason of these violations, including expenses associated with investigating and combating RadPad's and/or the Doe Defendants' unauthorized spam messages.

77. craigslist is also entitled to recover its reasonable attorney's fees and costs

pursuant to Cal. Bus. & Prof. Code § 17529.5(b)(1)(C).

FOURTH CLAIM FOR RELIEF

Computer Fraud and Abuse Act: 18 U.S.C. § 1030 *et seq.*

78. craigslist realleges and incorporates by reference all of the factual allegations set forth above.

79. craigslist's computers and servers are involved in interstate and foreign commerce and communication, and are protected computers under 18 U.S.C. §1030(e)(2).

80. On information and belief, RadPad and/or the Doe Defendants knowingly, willfully and intentionally accessed (and continue to access) craigslist's computers and servers without authorization. RadPad and/or the Doe Defendants accepted and agreed to be bound by the Terms of Use, which provide that users (a) are not authorized to access craigslist's computers and servers by means of "[r]obots, spiders, scripts, scrapers, crawlers, etc." and (b) are not authorized to access craigslist's computers and servers for the purpose of "collect[ing] users' personal and/or contact information."

81. On information and belief, after gaining unauthorized access to craigslist's servers, RadPad and/or the Doe Defendants obtained and used valuable information from craigslist's protected computers and servers in transactions involving interstate or foreign communications. This information includes, among other things, craigslist posts and other content.

82. RadPad and/or the Doe Defendants, knowingly, willfully, and with an intent to defraud have accessed (and continue to access) craigslist's computers and servers without authorization and obtained valuable information from craigslist's computers and servers that, on information and belief, RadPad and the Doe Defendants used to obtain something of value.

83. craigslist has suffered damage and loss by reason of these violations, including, without limitation, expenses associated with investigating the unauthorized access and abuse of its computers and servers, and other losses and damage in an amount to be proven at trial, and well in excess of $5,000 aggregated over a one year period.

84. In addition, craigslist has suffered and will continue to suffer irreparable harm,

and its remedy at law is not itself adequate to compensate it for injuries inflicted by RadPad and/or the Doe Defendants. Accordingly, craigslist is entitled to injunctive relief.

FIFTH CLAIM FOR RELIEF

California Comprehensive Computer Access and Fraud Act: Cal. Penal Code § 502

85. craigslist realleges and incorporates by reference all of the factual allegations set forth above.

86. RadPad and/or the Doe Defendants have violated California Penal Code §502(c)(2) by knowingly and fraudulently, and without permission, accessing, taking, copying, and making use of programs, data, and files from craigslist's computers, computer systems, and/or computer networks.

87. RadPad and/or the Doe Defendants have violated California Penal Code §502(c)(3) by knowingly, fraudulently, and without permission accessing and using craigslist's computers and servers.

88. RadPad and/or the Doe Defendants have violated California Penal Code §502(c)(6) by knowingly, fraudulently, and without permission providing, or assisting in providing, a means of accessing craigslist's computers, computer systems, and/or computer networks.

89. RadPad and/or the Doe Defendants have violated California Penal Code §502(c)(7) by knowingly, fraudulently, and without permission accessing, or causing to be accessed, craigslist's computers, computer systems, and/or computer networks.

90. As a direct and proximate result of RadPad's and/or the Doe Defendants' unlawful conduct within the meaning of California Penal Code §502, RadPad and/or the Doe Defendants have caused damage to craigslist, as described herein, in an amount to be proven at trial. craigslist is also entitled to recover its reasonable attorney's fees pursuant to California Penal Code §502(e).

91. In addition, craigslist has suffered and will continue to suffer irreparable harm, and its remedy at law is not itself adequate to compensate it for injuries inflicted by RadPad and the Doe Defendants. Accordingly, craigslist is entitled to injunctive relief.

SIXTH CLAIM FOR RELIEF

Direct and Indirect Copyright Infringement of the 2016 Copyrighted Works:

17 U.S.C. § 501, *et seq.*

92. craigslist realleges and incorporates by reference all of the factual allegations set forth above.

93. craigslist owns valid and enforceable copyrights in the 2016 Copyrighted Works, which are creative works of original authorship. craigslist has pending copyright registration applications for the 2016 Copyrighted Works. The pending copyright registration applications for the 2016 Copyrighted Works cover the full text and photographs of the listings.

94. Through the acts alleged above, RadPad and others acting in concert with it (including the Doe Defendants), violated craigslist's exclusive rights to reproduce, make copies of, distribute and display the 2016 Copyrighted Works, by, among other things, copying and displaying the 2016 Copyrighted Works on RadPad's website without a license in violation of 17 U.S.C. § 106.

95. RadPad and those acting in concert with it (including the Doe Defendants) were not authorized to copy, download, reproduce, create derivative works from, or display the 2016 Copyrighted Works.

96. RadPad and those acting in concert with it (including the Doe Defendants) knew or should have known that copying, distributing, displaying, and/or creating derivative works of and from the 2016 Copyrighted Works—which they had no license to copy, distribute, display, or create derivative works from—or controlling, directing, intentionally encouraging, inducing, or materially contributing to others' efforts to do so, infringed craigslist's exclusive rights in the 2016 Copyrighted Works.

97. To the extent that the Doe Defendants, including without limitation any "freelancers" from Elance-oDesk, Inc., were direct infringers of the 2016 Copyrighted Works as described herein, RadPad is indirectly liable for such direct infringements on all known theories of indirect liability, including without limitation vicarious liability, contributory liability, and "inducement" liability.

98. RadPad has, or at relevant times had, the right and ability to control the infringing conduct of its agents, affiliates, and co-conspirators—at least some of which RadPad admittedly hired for the express purpose of engaging in the conduct that constitutes infringement. And RadPad has received, and continues to receive, a direct financial benefit from the infringing conduct of its agents, affiliates, and co-conspirators, by improving or otherwise augmenting its service, as alleged *inter alia* in RadPad's Amended Counter-Complaint.

99. RadPad had knowledge of the conduct of its agents, affiliates, and co-conspirators that constitutes infringement, and materially contributed to that infringement, in the manner described herein. And RadPad deliberately and shamelessly induced that infringement for its own gain, as described herein.

100. craigslist is entitled to damages from RadPad in an amount to be proven at trial, including profits attributable to the infringement not taken into account in computing actual damages under 17 U.S.C. § 504(b). craigslist is entitled to statutory damages under 17 U.S.C. § 504(c) based on RadPad's infringements.

101. RadPad's infringement of craigslist's exclusive rights has also caused craigslist irreparable injury. Unless restrained and enjoined, RadPad will continue to commit such acts. craigslist's remedies at law are not adequate to compensate it for these inflicted and threatened injuries, entitling it to remedies, including injunctive relief as provided by 17 U.S.C. § 502 and an order impounding or destroying any and all infringing materials pursuant to 17 U.S.C. § 503.

SEVENTH CLAIM FOR RELIEF

Indirect Copyright Infringement of the Works 3taps Infringed: 17 U.S.C. § 501

102. craigslist realleges and incorporates by reference all of the factual allegations set forth above.

103. RadPad is contributorily liable for, and/or liable for inducing, 3taps' copyright infringements of the registered works referenced above, via the actions described herein.

104. craigslist never authorized or licensed 3taps or RadPad to use any of its copyrighted works.

105. RadPad's secondarily infringing conduct was knowing, intentional, and willful.

106. craigslist is entitled to RadPad's profits, pursuant to 17 U.S.C. § 504(a).

107. Alternatively, craigslist is entitled to elect statutory damages instead of RadPad's profits, pursuant to 17 U.S.C. § 504(c), including enhanced statutory damages due to RadPad's willful secondary infringement.

108. craigslist is entitled to its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, craigslist prays that judgment be entered in its favor and against Defendants as follows:

A. An injunction enjoining and restraining the Defendants, their employees, representatives, agents, and all persons or entities acting in concert with them during the pendency of this action and thereafter perpetually from:

1. Accessing or using the craigslist website, directly or indirectly, for any commercial purpose whatsoever;

2. Sending or transmitting, or paying, directing, aiding, or conspiring with others to send or transmit commercial electronic mail messages to craigslist users (*i.e.*, "spam messages") for any purpose, including but not limited to promotion of a commercial product or service;

3. Copying, downloading, harvesting, or obtaining craigslist user postings or craigslist user personal information by any means whatsoever;

4. Directly or indirectly displaying craigslist content;

5. Directly or indirectly violating the Terms of Use and/or Privacy Policy of any craigslist website, including but not limited to *craigslist.org*;

6. Circumventing technological measures that control access to craigslist;

7. Copying, reproducing, preparing derivative works from, distributing copies to the public, and/or publicly displaying craigslist's copyrighted works; and

8. Infringing any of craigslist's copyrighted materials.

B. An order compelling Defendants to account to craigslist for any and all profits derived from their unlawful conduct.

C. An order compelling Defendants to destroy all copies of craigslist's user listings in its possession, custody, or control.

D. An order awarding craigslist restitution and damages, as described herein and as permitted by law.

E. An order awarding craigslist pre-judgment interest.

F. An order awarding craigslist its costs of suit, including, but not limited to reasonable attorneys' fees, as permitted by law.

G. An order awarding craigslist such other relief as the Court deems appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Local Rule 3-6, Plaintiff demands a trial by jury.

Dated: September 14, 2016

LATHAM & WATKINS LLP

By: *__/s/ Perry J. Viscounty__*
Perry J. Viscounty

Attorneys for Plaintiff
craigslist, Inc.